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July 12, 2012

ARTICLE

EPA Tells State to Open St. Croix to Alewives

by Craig Idlebrook

In a July letter to Maine Attorney General William Schneider, the U.S. Environmental Protection Agency (EPA) has warned that the state's efforts to block alewife access to the St. Croix River violate the Clean Water Act. The letter states that blocking the fish at dams on the St. Croix constitutes an unauthorized change to the river's water quality, and that the state must remove manmade impediments that block alewives from reaching the Gulf of Maine. The EPA letter also refutes the argument among opponents of alewife restoration on the St. Croix that the fish are an introduced species.

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"EPA is not aware of any sound scientific rationale for excluding indigenous river herring (or other migratory species) from the St. Croix River," writes Stephen S. Perkins, Director of the EPA's Office of Ecosystem Protection, Region 1.

The letter has sent stakeholders of the St. Croix River scrambling to guess their next moves in the struggle over alewife restoration efforts on the St. Croix River. Washington County guides fear the St. Croix sports fishing industry will be decimated if the alewives are allowed back into all parts of the river; meanwhile, environmentalists are wondering whether the letter will be enough to compel Governor Paul LePage to comply with the EPA's order.

The letter was delivered just days before a procedural deadline was to pass for a lawsuit against the EPA by two environmental groups,

Friends of Merrymeeting Bay and the Conservation Law Foundation. The EPA's argument in the letter mirrors the groups' earlier arguments against the EPA, said Roger Fleming, an Earthjustice attorney based in Appleton. The letter's unequivocal tone represents a victory for proponents of alewife restoration, said Sean Mahoney, Maine Advocacy Center Director for the Conservation Law Foundation (CLF).

"The EPA letter has given us exactly what we wanted," Mahoney said. "Now, the question is, what is the state going to do about it?"

The EPA letter does not carry the same weight as a judge's ruling, Mahoney said. Technically, Maine's laws blocking alewives on the St. Croix are still in effect. Further complicating matters, the Grand Falls dam at the center of the controversy actually predates the Clean Water Act and doesn't require the same permits or certification as modern waterway structures, said EPA spokesman David Deegan.

"We can't compel the state to take action," Deegan said.

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The Maine Attorney General declined to comment on the EPA letter, and a call to the Governor's office went unreturned. Maine Department of Marine Resources Commissioner Pat Keliher said state agencies would discuss the letter soon.

In recent months, all the region's Native American tribal governments also have contacted Governor LePage to urge action to restore the alewife run on the St. Croix. It's the first time the five tribes on both sides of the border have spoken with a unified voice about the alewife issue. Even as recently as 2011, the Passamaquoddy tribal government at Indian Point argued to block alewife access. That position was largely taken because of misinformation that linked the indigenous alewife with an invasive relative, said Ed Bassett, a Passamaquoddy tribal council member and environmental technician.

"It was basically one big scare tactic," Bassett said. "It set the tribe on the wrong path."

Indian Point Passamaquoddy support for restricting alewife access on the St. Croix helped derail a 2008 legislative push to restore the fish's habitat. In 2008, then-Maine Governor Jon Baldacci was poised to support a measure to open up the St. Croix when then-Indian Point Passamaquoddy Governor William Nicholas personally lobbied to block the legislation. Governor Baldacci instead threw his weight behind a legislative compromise that only restored a fraction of access.

Washington County guides have long lobbied to restrict alewife access because they believe the fish were responsible for decimating smallmouth bass, a popular sports-fishing species, in the St. Croix watershed. Subsequent studies say other environmental factors most likely caused smallmouth bass numbers to decline, but the guides remain adamant.

"If they let the ocean alewives come in...your land is not going to be worth four dollars an acre," said Lance Wheaton, owner of the Village Camps in Forest City Township.

They also argue that alewives were not historically part of the watershed, despite strong scientific evidence to the contrary. Wheaton, a fifth-generation guide, says neither his father nor his grandfather even knew what an alewife was.

Scientists like Dalhousie University ocean biologist Fred Whoriskey, who recently worked with the Atlantic Salmon Federation in Nova Scotia, counter the alewife will add a biological richness to the St. Croix that will help all species. And alewife reintroduction might prove a boon to the lobstering industry, which historically has used the fish as a secondary bait option, said Shelia Dassatt, Executive Director of the Downeast Lobstermen's Association. Restoring that bait source might help ease shortages that have occurred in recent years, she said.

Nearby the St. Croix, the East Machias River supports a thriving alewife run that supports a robust harvest in the town of East Machias, said Dwayne Shaw, Executive Director for the Downeast Salmon Federation. Alewives' presence in that watershed hasn't hurt other fish populations in the river, either.

"It's one of the best bass fisheries in the state, both large-mouth and small-mouth," said Shaw.

If the state complies with the EPA order, it would ease tensions between Canada and the U.S. over the St. Croix River. Under an international treaty, decisions about the river's management are supposed to be made jointly between the two nations; Canada allows complete alewife access on its portion of the St. Croix River. For several years, environmental groups have asked the International Joint Commission (IJC) that oversees the St. Croix to speak out against restrictions on alewife access. In 2009, the IJC finally offered a compromise plan that would allow a gradual reintroduction of alewives to the St. Croix. Stakeholders from both sides balked at the plan, said Anne Chick, an IJC senior advisor.

It remains to be seen whether the state will try and implement the IJC's incremental plan, but Mahoney says the CLF will oppose an incremental approach. Such a plan would move too slowly, he argued, at a time when the National Resources Defense Council has lobbied the government to list alewives as endangered.

"The incremental plan could be stopped at any point and the incremental plan is based on bad science," Mahoney said.

St. Croix River stakeholders will watch in the coming days for the state's official reaction to the EPA letter. There are several possible outcomes, said Dr. Whoriskey: Governor LePage could issue an executive order to comply with the EPA's assertions, the legislature could repeal the laws blocking alewives from the St. Croix, or the Governor or the guides could fight the EPA through the court system. No one knows what the next move might be, but Dr. Whoriskey hopes the strong-worded EPA letter will end the debate.

"I would hope that science will prevail even if there isn't a regulatory hammer to enforce it," he said.

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